

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:

**BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹**

Debtors.

) **Chapter 11**

) **Case No. 09-12074 ()**

) **Joint Administration Requested**

**DEBTORS' MOTION FOR AN ORDER (A) AUTHORIZING THE
DEBTORS TO MAINTAIN AND ADMINISTER CUSTOMER
PROGRAMS AND HONOR PREPETITION OBLIGATIONS RELATED
THERE TO; AND (B) AUTHORIZING FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), submit this motion (the "**Motion**") for entry of an order, substantially in the form annexed hereto as **Exhibit A**, (a) authorizing the Debtors to maintain and administer customer programs and honor prepetition obligations to customers related thereto in the ordinary course of business and in a manner consistent with past practice; and (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

representations of such Debtors as to which checks are issued and authorized to be paid in accordance with this Motion. In support thereof, the Debtors respectfully represent:²

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

RELIEF REQUESTED

2. By this Motion, the Debtors, pursuant to sections 105(a), 363, 1107(a), and 1108 of title 11 of the United States Code (the "***Bankruptcy Code***") and Federal Rules of Bankruptcy Procedure 6003 and 6004, seek entry of an order authorizing the Debtors, in their sole discretion, to (a) honor outstanding obligations (including, without limitation, deductions, special pricing arrangements, and credits) earned by and owing to their customers under the Customer Programs (as defined herein), and (b) make payments to their customers in satisfaction of accrued prepetition obligations incurred by the Debtors under their Customer Programs (including, without limitation, warranties, allowances, credits, and rebates), in the approximate amount of \$5,450,000 in the aggregate (collectively, the "***Customer Program Obligations***").

3. The Debtors also seek entry of an order authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with this Motion.

² A description of the Debtors' business and the reasons for filing these Chapter 11 Cases is set forth in the Declaration of Paul S. Street in Support of Chapter 11 Petitions and First Day Relief (the "***Street Declaration***"), filed contemporaneously with this Motion. This Motion is supported by the Street Declaration.

BACKGROUND

4. On the date hereof (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no committees have been appointed or designated.

5. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

6. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels. Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.
- ***SelectBuild.*** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer

these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

7. The Debtors operate in metropolitan areas that have historically outpaced U.S. averages for residential building permit activity (largely in the Southern and Western portions of the United States). Based on National Association of Home Builders building permit activity, the Debtors provide building products and construction services in 9 of the top 25 single-family construction markets.

8. Prior to the Petition Date, the Debtors, with the assistance of their professionals and advisors, pursued several avenues to try to maximize the value of the Debtors' business, including conducting a process to sell the Debtors' business. The Debtors' prepetition sale process did not, however, yield offers that reflected, in the Debtors' business judgment, the true value of the Debtors' business operations.

9. Contemporaneously with this prepetition marketing and sale effort, the Debtors engaged in good faith, arm's-length negotiations with significant holders of the Debtors' prepetition secured indebtedness to develop a way to de-lever the Debtors' business, while at the same time providing the Debtors' unsecured creditor constituency with a substantial recovery. These negotiations culminated in the proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"), filed contemporaneously with this Motion.

10. As set forth in greater detail in the Plan and Disclosure Statement, the Plan contemplates a restructure of the Debtors' balance sheet and ownership structure, as well as an immediate cash distribution to unsecured creditors and an opportunity for such creditors to receive full payment from the Reorganized Debtors, depending on business performance. The Debtors believe that the restructuring proposal embodied in the Plan provides the Debtors' creditors with the best means of maximizing value of the Debtors and their businesses. To

implement this restructuring, the Debtors have obtained a commitment to provide \$80 million in the form of debtor-in-possession financing, which the Debtors seek to have approved by the Court contemporaneously herewith.

11. As of the Petition Date, the Debtors employ approximately 5,500 people. Approximately 300 of the Debtors' employees are represented by seven unions with whom the Debtors have collective bargaining agreements. For the 12 months ended March 31, 2009, the Debtors' total revenue totaled approximately \$1.1 billion. As of March 31, 2009 the book value of the Debtors' assets totaled approximately \$480 million and its liabilities totaled approximately \$481 million.

THE DEBTORS' CUSTOMER PROGRAMS

12. As described in the Street Declaration, maintaining the loyalty and goodwill of customers is critical to the Debtors' reorganization efforts. In addition to delivering quality building products, manufactured building components, and construction services, the Debtors must maintain positive customer relationships and their reputation for quality. Achieving these goals will be particularly important while operating during the Chapter 11 Cases. Indeed, the Debtors believe that the ability to honor their Customer Program Obligations in the ordinary course of business is necessary to retain the Debtors' customer base and reputation for quality.

13. To maintain the loyalty and goodwill of their customers, the Debtors implemented customer-related programs (the "*Customer Programs*") to encourage new purchases, enhance customer satisfaction, sustain goodwill, and ensure that the Debtors remain competitive. The Customer Programs can generally (but not exclusively) be categorized as follows: (a) customer rebates, special pricing arrangements, and incentive and promotional programs; and (b) warranties that the Debtors' products are free from defects in materials and

workmanship. The Debtors' most significant Customer Programs are described in greater detail below.

A. Customer Rebates, Special Pricing Arrangements, and Incentive Programs

14. The Debtors offer certain rebate programs and special pricing arrangements to attract new customers and retain existing ones (collectively, the "*Customer Pricing Programs*"). Although these programs vary among each of the Debtors' customers, the Debtors' rebate and special pricing structures are all designed to encourage customers to increase their purchasing volume to obtain greater rebates, resulting in larger net revenues for the Debtors, and/or as a means to ensure competitive pricing.

15. For example, customers may earn graduated volume-based rebates in connection with the purchase of a single product or service and/or customers may earn rebates as a percentage of total purchases. In addition, the Debtors offer further price adjustments for customers using cash to purchase the Debtors' products and services. The Debtors issue periodic rebates from their customers' remittances typically (but not exclusively) on a monthly, quarterly, or annual basis. These rebates are either paid by check, applied to credit a customer's account, or deducted from payments owed to the Debtors. As a result of the economic downturn, many of the Debtors' customers have been unable to meet the minimum thresholds to become eligible for these Customer Programs.

16. In some cases, the Debtors' Customer Pricing Programs may result in customers paying for the goods or services to be provided by the Debtors before those goods or services are actually provided. For example, in some cases the Debtors are paid based upon a contractual date, before the beginning of a particular phase of a job or based upon the percentage of the job completed which results, or may result, in the Debtors being paid in advance of performing the work. The Debtors request the authority to provide any and all goods or services

that have been paid for by customers prior to the Petition Date but that have not yet been provided by the Debtors. The Debtors aver that this authorization is necessary to maintain their valuable customer relationships.

17. The Debtors estimate that as of the Petition Date, there is approximately \$50,000 outstanding on account of Customer Pricing Programs.

B. Warranty Programs

18. The Debtors maintain various warranty programs (the "*Warranty Programs*"). The Warranty Programs are necessary to boost customer confidence that the Debtors' products are of the highest quality and that any defects in the products will be promptly remedied. Although not all of the Debtors offer identical warranties, they are all designed to retain customers, ensure that the Debtors remain competitive, and fulfill any state law obligations.

19. Generally, each Debtor offers a limited warranty that goods delivered, even those manufactured by third parties, will be free from faults and defects in materials and workmanship. In some cases, the warranty is limited to 1 or 2 years, however, there are certain contracts, or obligations created by state law, that require the Debtors to provide a warranty period for the longer of (a) 10 years, or (b) the period required by applicable law. To the extent that claims are received under the warranties provided, the Debtors first attempt to repair or replace any defective materials and if necessary, pay the claimant for any losses.³ If the Debtors

³ To the extent that a defective product causes property damage or bodily injury, any claims asserted against the Debtors will be covered by insurance. However, to the extent that the damages are limited to the product itself, the Debtors must account for the full cost of the claim as part of their Customer Programs.

fail to honor any prepetition warranties, they will be in danger of losing customers who are essential to a successful reorganization.

20. It is difficult to determine the Debtors' exposure under the Warranty Programs on any specific date (as many Warranty Program obligations are calculated on a retroactive basis). The Debtors, however, estimate that there are approximately \$5,400,000 of Warranty Program obligations accrued and outstanding as of the Petition Date.

21. The Debtors request the authority to continue each of their Customer Programs, including, without limitation, their Customer Pricing Programs and their Warranty Programs, and to honor any and all obligations arising under such Customer Programs.

BASIS FOR RELIEF

A. Sufficient Cause Exists to Authorize the Debtors to Honor Customer Program Obligations

1. The Court may Authorize Payment of the Customer Program Obligations Pursuant to Section 363 of the Bankruptcy Code

22. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to authorize a contractor to pay prepetition claims of some suppliers who were potential lien claimants because payments were necessary for general contractors to release funds owed to the debtors). In addition, section 363(c) allows a debtor-in-possession to enter into transactions involving property of the estate in the ordinary course of business without an order of the court. *See, e.g., In re James A. Phillips*, 29 B.R. at 395 n.2

("Insofar as transactions are actually in the ordinary course, they are authorized automatically by § 363(c)(1) and § 1107(a), and do not require Bankruptcy Court approval.").

23. The Debtors' request for relief in this Motion is appropriate under each of the foregoing standards. The Debtors seek to continue their Customer Programs without interruption during the pendency of the Chapter 11 Cases. The Customer Programs are an integral part of the Debtors' business that enable the Debtors to attract and retain customers. If the Debtors do not honor their Customer Programs in the ordinary course of business, the Debtors would be significantly less competitive, which undoubtedly would lead to a decrease in business.

24. Moreover, the Debtors would risk isolating certain customer constituencies or, possibly, even encouraging them to initiate business relationships with the Debtors' competitors. The failure to honor the Customer Programs could erode the Debtors' hard-earned reputation and brand loyalty, which, in turn, could adversely affect the Debtors' prospects for a successful reorganization. Accordingly, in the exercise of their sound judgment, the Debtors believe that a sound business purpose exists for the relief requested herein because it will pay dividends with respect to the long-term reorganization of the Debtors' business, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of the Chapter 11 Cases.

25. In addition, because the Debtors pay the Customer Program Obligations in the ordinary course of business, the Debtors submit that Court approval of the Debtors' payments is not necessary because of the authority granted to them by section 363(c). Indeed, most, if not all, of the Customer Programs are standard practice in the Debtors' industry. Nonetheless, for the avoidance of doubt, the Debtors request that the Court grant the relief requested herein and enter

an order authorizing them to pay the Customer Program Obligations in the ordinary course of the Debtors' business.

2. The Court may Authorize Payment of the Customer Program Obligations Pursuant to Section 105(a) of the Bankruptcy Code and the Doctrine of Necessity

26. The Debtors' proposed payment of the Customer Program Obligations should also be authorized pursuant to section 105(a) of the Bankruptcy Code and the "doctrine of necessity."

27. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under [section] 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177); *accord In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) ("To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is 'critical to the debtor's reorganization.'") (quoting *In re Fin. News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)); *see also In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) ("[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.").

28. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport*

Ry., 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent "stoppage of [crucial] business relations"); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that "if payment of a claim which arose prior to reorganization is essential to the continued operation of the...[business] during reorganization, payment may be authorized even if it is made out of [the] corpus"); *Dudley v. Mealey*, 147 F.2d 268 (2d Cir. 1945), *cert. denied* 325 U.S. 873 (1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases); *Michigan Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

29. The "doctrine of necessity" functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. See *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation); *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) ("[C]ourts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization."). The doctrine is frequently invoked early in a reorganization, particularly in connection with payment of prepetition claims. The court in *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), observed the decisional authority that supports "the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary

to 'permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.'" (quoting *In re Chateaugay Corp.*, 80 B.R. at 287). The court stated that "a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." *Id.* at 932. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11 – "facilitating the continued operation and rehabilitation of the debtor...." *Ionosphere Clubs*, 98 B.R. at 176.

30. As stated above, the payment of the Customer Program Obligations is essential to maintain the Debtors' relationships with their customers, who are essential to the Debtors' businesses. In turn, the maintenance of the Debtors' business during the Chapter 11 Cases is crucial to the Debtors' ability to rehabilitate for the benefit of all stakeholders. Thus, this Court should exercise its equitable powers to grant the relief requested herein.

31. Courts in this District have recognized that retaining patronage and customer loyalty is critical to a debtor's prospects for a successful reorganization and, accordingly, have granted relief similar to the relief requested herein.⁴ See, e.g., *In re Sun-Times Media Group, Inc.*, Case No. 09-11092 (CSS) (Bankr. D. Del. Apr. 1, 2009); *In re Masonite Corp.*, Case No. 09-10844 (PJW) (Bankr. D. Del. Mar. 17, 2009); *In re Smurfit-Stone Container Corp.*, Case No. 09-10235 (BLS) (Bankr. D. Del. Jan. 27, 2009); *In re Pierre Foods, Inc.*, No. 08-11480 (KG) (Bankr. D. Del. July 16, 2008); *In re Tropicana Entm't, LLC*, No. 08-10856 (KJC) (Bankr. D. Del. May 6, 2008); *In re Leiner Health Prods. Inc.*, No. 08-10446 (KJC) (Bankr. D. Del. Mar. 12, 2008); *In re Buffets Holdings, Inc.*, No. 08-10141 (MFW) (Bankr. D.

⁴ The Debtors have not annexed copies of the unreported orders cited herein because of their size. Copies of these orders, however, are available upon request of the Debtors' counsel, including at the hearing to consider the Motion.

Del. Jan. 23, 2008); *In re Tweeter Home Entm't Group, Inc.*, No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); *In re Pope & Talbot, Inc.*, No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007).

B. The Court Should Authorize the Debtors' Banks to Pay the Claims Described Herein

32. In connection with the foregoing, the Debtors respectfully request that the Court enter an order that (a) authorizes all applicable banks and financial institutions to receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims the Debtors request authority to pay in this Motion, regardless of whether the checks were presented, or fund transfer requests were submitted, before or after the Petition Date and (b) provides that all banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this application, and such banks and other financial institutions shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

C. Immediate Relief is Justified

33. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within twenty (20) days after the filing of the petition regarding a motion to "use, sell, lease, or otherwise incur an obligation regarding property of the estate" only if such relief is necessary to avoid immediate and irreparable harm. As described above, the Customer Programs are integral to the Debtors' continued operations because they are necessary to maintain the confidence and goodwill of the Debtors' customer base. This is especially true in light of the highly competitive nature of the Debtors' business. Indeed, the Debtors' reputation for reliability is one of the Debtors' most valuable assets and must be preserved.

34. Accordingly, the Debtors submit they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of their Customer Program Obligations.

DEBTORS' RESERVATION OF RIGHTS

35. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to dispute any claim asserted by a customer under applicable non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

REQUEST FOR WAIVER OF STAY

36. To implement the foregoing, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." As set forth above, the immediate satisfaction of the Customer Program Obligations is essential to prevent potentially irreparable damage to the Debtors' operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 10-day stay imposed by Bankruptcy Rule 6004(h).

NOTICE

37. No trustee, examiner, or creditors' committee has been appointed in these chapter 11 cases. The Debtors have provided notice of filing of the Motion either by electronic mail or facsimile and/or by overnight mail to: (a) the Office of the United States Trustee for the

District of Delaware; (b) the 50 largest unsecured creditors of the Debtors on a consolidated basis as identified in the Debtors' chapter 11 petitions; and (c) counsel to Wells Fargo Bank, as agent for both of the Debtors' prepetition lenders and proposed postpetition lenders. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

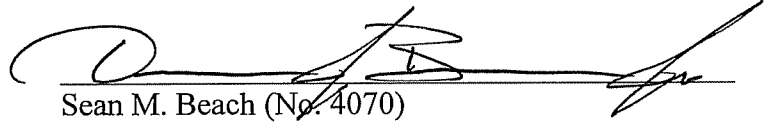
NO PRIOR REQUEST

38. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
June 16, 2009

YOUNG CONAWAY STARGATT &
TAYLOR, LLP



Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West St., 17th Floor
Wilmington, DE 19801
Telephone: 302.571.6600
Facsimile: 302.571.1253

---- and ----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (*pro hac vice* pending)
Matthew K. Kelsey (*pro hac vice* pending)
Sae M. Muzumdar (*pro hac vice* pending)
200 Park Ave, 47th Floor
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Aaron G. York (*pro hac vice* pending)
Jeremy L. Graves (*pro hac vice* pending)
2100 McKinney Ave, Suite 1100
Dallas, TX 75201-6911
Telephone: 214.698.3100
Facsimile: 214.571.2900

PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

IN RE:)
) Chapter 11
)
BUILDING MATERIALS HOLDING)
CORPORATION, *et al.*,¹) Case No. 09-12074 ()
)
) Jointly Administered
Debtors.)
)
) Ref. Docket No. _____
)

Upon consideration of the motion (the "***Motion***") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), for entry of an order (a) authorizing the Debtors to maintain and administer customer programs and honor prepetition obligations to customers related thereto in the ordinary course of business and in a manner consistent with past practice; and (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with this Order, all as set forth in the Motion; and

068301.1001

upon the Street Declaration² in support thereof; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth below.
2. The Debtors are authorized, in their sole discretion, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs, including, without limitation, their Customer Pricing Programs and their Warranty Programs, and to pay, honor, or otherwise satisfy any prepetition amounts outstanding thereunder.
3. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date. Such banks and financial institutions may rely on the representations of

² Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this order, and such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

4. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of any Customer Program Obligations that are dishonored or rejected.

5. Nothing in the Motion or this Order shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the right to dispute any claim, or an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

6. If the Debtors honor a Customer Program in favor of a person or entity that is a beneficiary of a letter of credit as security for the Debtors' payment, the Debtors may condition payment of the Customer Program Obligation, or other amount owing, on the beneficiary's agreement not to draw on the letter of credit so long as the Debtors remain current on their payment obligations, notwithstanding any provision in the underlying letter of credit that may allow such beneficiary to draw on the letter of credit as a result of the Debtors' bankruptcy filings.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") has been satisfied.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6004(a).

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
June ____, 2009

UNITED STATES BANKRUPTCY JUDGE